

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

WILLIAM M. ESTEY,)	
)	
Petitioner,)	Civil Case No. 05-1410-HU
)	
vs.)	ORDER
)	
JEAN HILL,)	
)	
Respondent.)	
_____)	

Amy Baggio
Assistant Federal Public Defender
101 S. W. Main Street, Suite 1700
Portland, Oregon 97204

Attorney for Petitioner

Hardy Myers
Attorney General
Jonathan W. Diehl
Assistant Attorney General
Oregon Department of Justice
1162 Court Street, N. E.
Salem, Oregon 97301

Attorneys for Respondent

KING, Judge:

The Honorable Dennis J. Hubel, United States Magistrate Judge, filed Findings and Recommendation on February 22, 2008. The matter is before this court. See 28 U.S.C. § 636(b)(1)(B) and Fed. R. Civ. P. 72(b). Petitioner has filed objections and defendant has filed a response.

When either party objects to any portion of a magistrate's Findings and Recommendation concerning a dispositive motion or prisoner petition, the district court must make a *de novo* determination of that portion of the magistrate's report. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); McDonnell Douglas Corp. v. Commodore Business Machines, Inc., 656 F.2d 1309, 1313 (9th Cir. 1981), cert. denied, 455 U.S. 920 (1982).

Having given a *de novo* review of the issues raised in the objections to the Findings and Recommendation, I find no error requiring me to reject Judge Hubel's Findings and Recommendation. I do note that the Findings and Recommendation inaccurately reports one fact. At pages 3 and 13, the Findings and Recommendation states that petitioner's fiancée "opened the door" and asked how things were going. The transcript actually reflects Officer Crabtree's testimony that petitioner's fiancée "would come and knock at the door, and say, you know, how are things going?" Tr. 30. Nevertheless, keeping this correction in mind, I conclude the state court's determination, that petitioner was not in custody while being questioned, was not contrary to Miranda v. Arizona, 384 U.S. 436 (1966) and was not based on an unreasonable determination of the facts.

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Accordingly, I ADOPT Judge Hubel's Findings and Recommendation (#49), with the change noted above, and DENY the Amended Petition for Writ of Habeas Corpus (#39). This action is dismissed.

IT IS SO ORDERED.

Dated this 30th day of April, 2008.

/s/ Garr M. King
Garr M. King
United States District Judge